

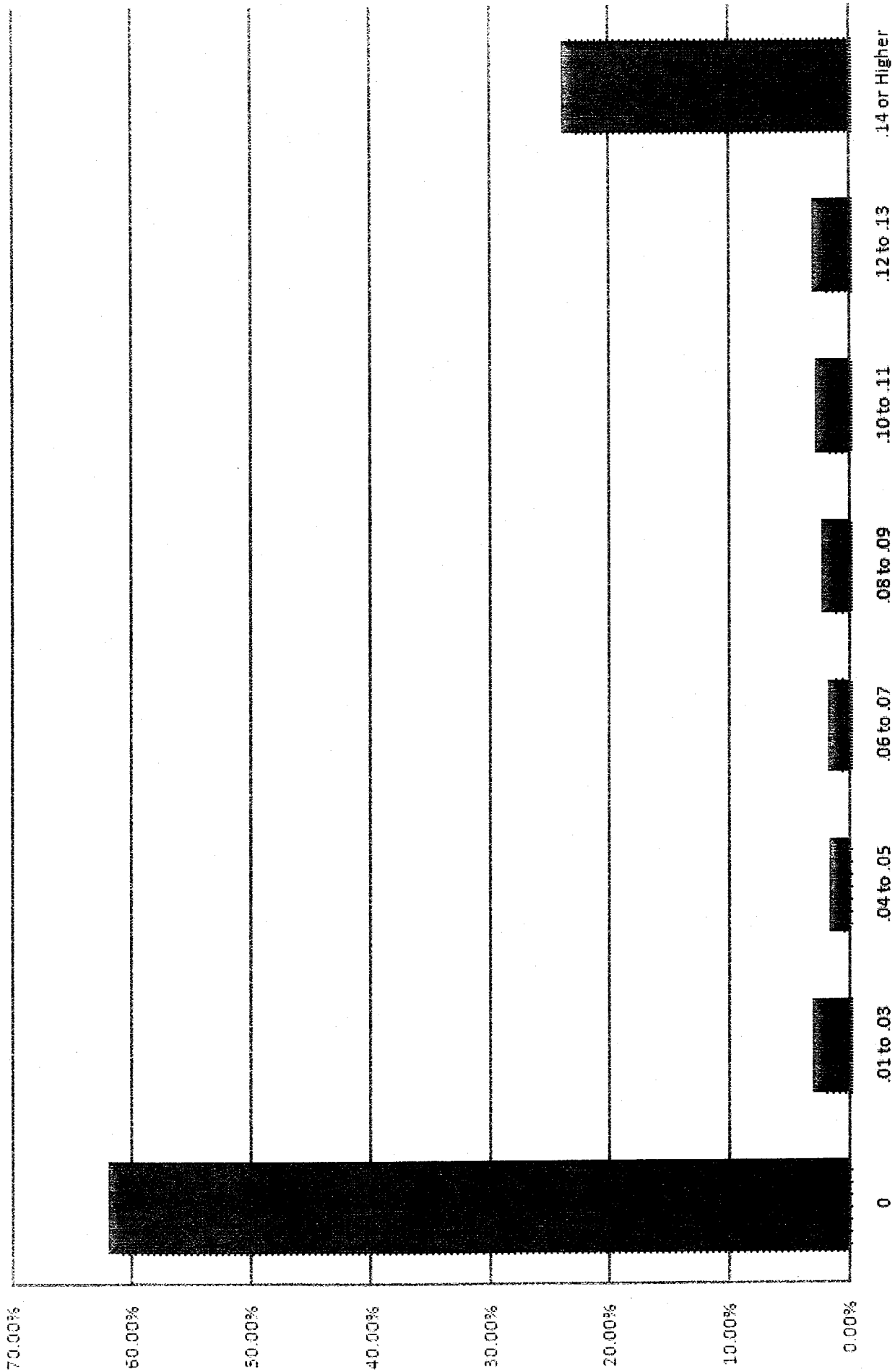
February 17, 2011
(S) Judiciary
SB 308

SENATE JUDICIARY
CLERK NO. 12
DATE 2/17/11
SB 308
336

Dear Chair and members of the committee, For the record my name is Mike Fellows and I live in Missoula. I rise in opposition to SB 308. I'm concerned about our constitutional rights in this bill. It's never fun to get pulled over, but I've met people over the years who got pulled over for things like working taillights or the Bartender who when he got off shift got pulled over for simply leaving work at 2:30 in the Morning. If that wasn't bad enough the same law enforcement official stopped him the next night on a dirty license plate, hoping to find something. This bartender has MS and no way would he pass the roadside tests. I think this bill is more of a revenue enhancement bill then a safety bill. Most of these type of bills target the social drinker who may have just a few drinks or they target people who may not have any drinks but are leaving an establishment and assumed to have had a few. We target the .08 folks, but they are not the problem. Government stats from 2006 indicate our worst drivers are those who have a .00 and those who have a .14 and above as this chart indicates. We pull people over and rely on a breath test that is not accurate. A recent case this week in the Missoulian newspaper talked about a women who showed up in court after drinking. The JP ordered a breath test and on first reading the officicer got a .085 but 20 minutes later the reading was .025. We may be doing harm to some drivers based on results that don't reflect being impaired. Jim Schilz of Missoula of Missoula mentions that being blood test cost over 200 dollars, who pays for it if your found innocent? Also he says the blood test may

be done out of town and who pays for the person running the test to be in court to testify as per Supreme Court rulings that the person doing the test will have to appear and testify in the case, since a lab slip won't do. The innocent person should not have to bear the cost and will we clog up the courts if people do sue on this issue. In closing it seems every session we pass more laws to address this problem and they don't seem to work, so we can be certain that in the 2013 legislative session there will be more laws. Let's enforce the laws we have. I would recommend a do not pass on SB 308. Thank you for your time.

Measured Alcohol Content of Drivers in Fatal Crashes in 2006



Source: NHTSA Fatality Analysis Reporting System

Missoulain

Missoula judge jails woman who appears in court after drinking

By GWEN FLORIO of the Missoulain | Posted: Monday, February 14, 2011 8:45 pm

Here's a suggestion: If you're scheduled to appear in court in an alcohol-related case, best not to drink beforehand.

But if you do, it's a really bad idea to lie to the judge about it.

Rose Ellen Maas did both those things Monday and ended up in jail as a result.

Maas, 45, was summoned to appear before Justice of the Peace Karen Orzech to explain why she wasn't going to the ACT (Assessment, Course and Treatment) program that was part of her sentence on a 2009 drunken driving conviction.

She launched into a litany of reasons. She'd lost her job. Couldn't afford counseling. Was dealing with a family member's problems. Would be out of town for a scheduled surgery. On and on she went.

Orzech listened.

She asked whether Maas was on any medication.

No, Maas replied. Not at the moment.

What about drinking?

No, said Maas.

Orzech didn't buy it. Within moments, a Missoula County sheriff's deputy was in the courtroom with a breath test kit.

And moments after that, the device beeped, showing a 0.085. The legal limit for impairment is 0.08.

"Guess what?" Orzech told Maas. "You can go to jail."

Then she looked out across the small courtroom.

"The nose knows," she said. "If anybody's been drinking out there, you can leave right now because I can smell alcohol like you wouldn't believe."

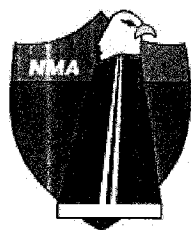
Because Maas had been eating a cough drop, Orzech ordered the breath test repeated after about 20 minutes. This time, the device showed 0.025. That's still a violation of the terms of her sentence, in which she was ordered to undergo treatment and drive only with an interlock device that prevents the car from starting if the driver has been drinking.

Orzech sent Maas to jail for 24 hours.

"I'm done with you," she said, warning Maas that if she messed up again, she'd go back to jail for seven days, or even as much as 30 days.

"Good luck with your life," Orzech said. "I hope you get your alcohol under control."

Missoulain reporter Gwen Florio can be reached at 523-5268, gwen.florio@missoulain.com or on CopsAndCourts.com.



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4 Ways To Fix The DUI/DWI Enforcement System

A legitimate police stop for a suspected drunk-driving incident does not have to rely on trick questions, sensing devices, or gimmicks to justify a chemical test of the driver. The driver's lack of control of his or her vehicle, an inability to reasonably react to questions and requests, and physical reactions will all be dead giveaways of an impaired condition.

Unfortunately, the government, insurance companies, and self-serving organizations have institutionalized a negative stereotype of anyone who drinks and drives, no matter how responsibly. By labeling virtually all drivers who drink and drive as "drunk drivers," they have created a situation where responsible and constructive citizens are at risk of suffering huge fines, high insurance

charges, loss of driving licenses, confiscation of personal property, and even incarceration, all for the singular act of violating an arbitrary and unreasonable BAC standard.

The underlying rationale for the current DUI hysteria is based on propaganda. The enforcement tactics are dubious, invasive, and abusive. The real solution to this problem – a legitimate campaign gone wrong – is to honestly determine the real magnitude of the "drunk driver" menace. Then, we must establish legitimate standards to define "drunk driving," eliminate the enforcement excesses that have been allowed to fester, and return the legitimate due process rights that all citizens should be entitled to, regardless of the "crime" they are charged with committing. This won't happen without taking the first step.

Each and every one of us must demand change. Rest assured that doing nothing is the guaranteed route to more abusive use of government authority to harass honest, hard-working citizens who are a threat to no one, including themselves.

Here are four issues that must be addressed to correct the abuses fostered by revenge and prohibition-driven DUI policies:

1. Repeal the .08 percent Blood Alcohol Content laws and set more legitimate and rational BAC standards.

Current law says that any person with a BAC of .08, or higher is automatically a drunk driver, no exceptions and no defenses to the contrary. This is an absolute standard that is also absolutely arbitrary. The vast majority of people who drink are not effectively impaired with a BAC of .08 and they are perfectly capable of driving in a safe and responsible fashion. If we are to have an absolute BAC standard that automatically classifies a person as a drunk driver, that standard should be at least high enough to encompass drivers that are actually impaired. A BAC standard of .12 percent would be a more fair and legitimate legal threshold. This does not mean that a person who is obviously impaired, but who has a BAC below .12, cannot be arrested and charged with DUI. It simply means that their BAC level does not automatically make them a "drunk driver."

Using absurdly low BAC standards, like .08 make it easy for the police to arrest alleged "drunk drivers" and easier yet to convict them in court. "Easy" doesn't mean fair or reasonable.

2. Reform the system of fines and penalties for technical violations of BAC standards to reflect the actual harm done by the defendant.

If an impaired driver (or any driver, impaired or not) causes property damage and personal harm they should be punished accordingly, preferably providing full compensation for the losses suffered by others. However, a person who is stopped because of a minor traffic or equipment violation and is subsequently charged with violating the BAC standard should not have to endure huge fines, loss of license, unfair insurance charges, and jail time because they had three drinks instead of two. A person distracted by a cell phone conversation or kids in the back seat can cause just as much damage and mayhem as an impaired driver. There should be more balance in how they are treated by the police and the courts.

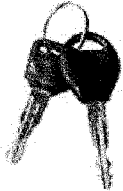
3. Prohibit the use of Breathalyzer results as a determinate of impairment or blood alcohol content.

Breathalyzers do not accurately reflect blood alcohol content. The margin of error can be as much as 50 percent! Furthermore, even if accurately measured, blood alcohol content is not an accurate determinate of impairment. Even a breathalyzer that very accurately measures breath alcohol content tells the operator very little about real blood alcohol content and less yet about impairment. What other industry, agency, business, or school would accept a measurement device that can err up to 50 percent? Yet, we are destroying people's lives based on the readings of these instruments.

4. Eliminate the use of roadblocks (sobriety checkpoints) for DUI enforcement.

The purpose of DUI roadblocks is to instill a sense of fear and intimidation. DUI roadblocks catch very few drunk drivers. The same officers, if deployed to find actual impaired drivers, would generate far more arrests for DUI than they can operating roadblocks. Roadblocks, for any reason other than absolute emergencies, are contrary to the values of a free society. Free people should be able to go about their business without being confronted with armed, uniformed government agents who demand that we stop and "show our papers."

Only when average, everyday Americans start speaking out on these issues will change occur. Right now legislators are only hearing from those who are misguided by a campaign of revenge or who use drunk driving as an excuse to promote a prohibitionist agenda. Results to date are enforcement abuses, perverted courts, draconian penalties for victimless crimes, and 1.5 million people annually who have had their lives turned upside down, often for violating an arbitrary and irrational law. Isn't it time we all speak out in opposition to this miscarriage of justice?

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The NMA believes that
DUI/DWI laws should be
enforced using reasonable
standards that respect the
rights of motorists.

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NMA Position on DUI/DWI

The NMA supports DUI/DWI regulations based on reasonable standards that differentiate between responsible behavior and reckless, dangerous behavior.

NMA DUI/DWI Fact Sheet[Download, Print & Distribute \(PDF\) \(/dui/dui-fact-sheet.pdf\)](#)**DUIs Can Be Beat**

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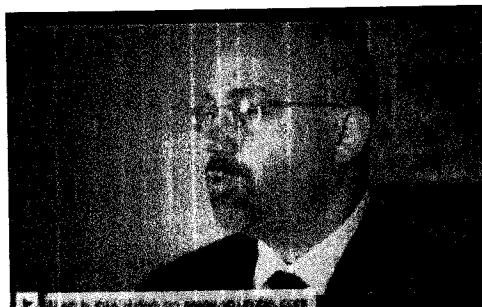
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